

Frank J. Rubino
Corporation Counsel for the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARTHUR HINES,

Plaintiff,

-against-

ANSWER

CITY OF YONKERS, THE CITY OF YONKERS
POLICE DEPARTMENT, POLICE OFFICER
JOHN DAUGHERTY, POLICE OFFICER
ROBERT SANTOBELLO, POLICE OFFICER ROY
PILOT, POLICE OFFICER JOHN MALLON and
DETECTIVE JAMES MCGOVERN.

Index No. 08 CV 3126 (SCR)

Defendants.

-----X

Defendants, CITY OF YONKERS, THE CITY OF YONKERS POLICE
DEPARTMENT, POLICE OFFICER JOHN DAUGHERTY, POLICE OFFICE OFFICER
ROBERT SANTOBELLO, POLICE OFFICER ROY PILOT, POLICE OFFICER JOHN
MALLON and DETECTIVE JAMES MCGOVERN. by their attorney, FRANK J. RUBINO,
Corporation Counsel of the City of Yonkers, as and for its Answer to the Complaint
respectfully allege as follows:

FIRST: Deny the allegations set forth in paragraphs "1", "2", "3" and "4" of the
Complaint; except those portions containing conclusions of law which accordingly
require no response; and except admit that Plaintiff purports to proceed as stated therein.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "5", "19", "20", "24" and "25" of the Complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "7", "8" and "12" of the Complaint and respectfully refers all questions of law to the Court.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "9" of the Complaint; except admit that Plaintiff purports to proceed as stated therein.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "10" of the Complaint; except admit receipt of a paper writing purporting to be a notice of claim on December 24, 2007 and respectfully refer all questions of law to the Court.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "13", "14", "15", "17", "18", "21", "22" and "23" of the Complaint and respectfully refers all questions of law to the Court.

SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "16" of the Complaint.

ANSWERING THE FIRST CAUSE OF ACTION

EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "26" of the Complaint with the same force and effect as though fully set forth herein at length.

NINTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “27”, “28” and “30” of the Complaint and respectfully refers all questions of law to the Court.

TENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated “29” of the Complaint and respectfully refers all questions of law to the Court; except admit that Plaintiff purports to proceed as stated therein.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “31” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SECOND CAUSE OF ACTION

TWELVTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “32” of the Complaint with the same force and effect as though fully set forth herein at length.

THIRTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “33”, “34”, “36”, “37”, “38”, “39” and “40” of the Complaint and respectfully refers all questions of law to the Court.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “35” of the Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

FIFTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "41" of the Complaint with the same force and effect as though fully set forth herein at length.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "42" of the Complaint.

SEVENTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "43a", "43b", "43c", "43d", "43e", "45", "46", "47", "48", "49", "50" and "51" of the Complaint and respectfully refers all questions of law to the Court.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "44" of the Complaint and respectfully refers all questions of law to the Court.

NINETEENTH: Deny all allegations in the "Wherefore" portion of the Complaint, except those conclusions of law which accordingly require no response; and except admits that Plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE:

TWENTIETH: The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE:

TWENTY-FIRST: That if any physical force was used to effect the arrest of the Plaintiff, only such physical force was used to the extent it was reasonably believed to be necessary to effect the arrest of the plaintiff, whom the arresting officer reasonably believed to have committed an offense.

AS AND FOR A THIRD DEFENSE:

TWENTY-SECOND: That the Plaintiff's arrest and prosecution were not effectuated falsely, maliciously, or without probable cause. On the contrary, there was reasonable and just cause for believing the Plaintiff guilty of a criminal act and in arresting and prosecuting the Plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A FOURTH DEFENSE:

TWENTY-THIRD: Defendants' actions were in good faith and for good cause including, but not limited to, legitimate, rational and appropriate governmental interests.

AS AND FOR A FIFTH DEFENSE:

TWENTY-FOURTH: Injuries and damages to the Plaintiff were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of Plaintiff.

AS AND FOR A SIXTH DEFENSE:

TWENTY-FIFTH: At all times relevant to the Complaint, Defendants have been in compliance with all requirements under the laws cited by the Complaint.

AS AND FOR A SEVENTH DEFENSE:

TWENTY-SIXTH: Defendant City of Yonkers Police Department is improperly sued in this action when the Police Department is merely a department of the City of Yonkers.

AS AND FOR A EIGHTH DEFENSE:

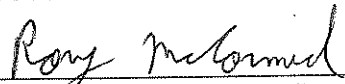
TWENTY-SEVENTH: The individual Defendants are entitled to the defense of qualified immunity.

WHEREFORE, defendants request judgment dismissing the Complaint together with costs, disbursements, and attorneys' fees and any other relief the Court deems just and proper.

Dated: Yonkers, New York
May 7, 2008

Yours, etc.,
FRANK J. RUBINO
Corporation Counsel
Attorney for Defendant
THE CITY OF YONKERS
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6256

By:


Rory McCormick (RM 3994)
Associate Corporation Counsel

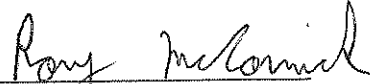
TO: Law Offices of Wale Mosaku, P.C.
Attorney for Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2008 I caused a true and correct copy of the foregoing ANSWER to be served by mail upon:

Law Offices of Wale Mosaku, P.C.
Attorney for Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201

Dated: May 7, 2008
Yonkers, New York


Rory McCormick